

BEFORE THE TRANSPORTATION SECURITY ADMINISTRATION
DEPARTMENT OF HOMELAND SECURITY

In the Matter Of:

Docket Number TSA-2003-14610
“Security Threat Assessment for Individuals Applying for A Hazardous Materials
Endorsement for a Commercial Drivers License”

Comments of:

National Tank Truck Carriers, Inc.
2200 Mill Road
Alexandria, VA 22314

Voice = 703/838-1960
Fax = 703/684-5753
E-Mail = charvison@tanktruck.org

Clifford J. Harvison, President

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Before the Administrator, Transportation Security Administration (TSA):

National Tank Truck Carriers, Inc. (NTTC) is a trade association composed of trucking companies, which specialize in the nationwide distribution of liquid and dry commodities in cargo tank motor vehicles. Additionally, a number of our corporate members are extensively involved in transporting international shipments into and from both Canada and Mexico.

Given the nature of tank truck operations, it is reasonable to assume that over 80 percent of the traffic, handled by our membership, would be classified as “hazardous materials” under regulations promulgated by the United States Department of Transportation. Virtually 100 percent of the drivers employed or leased by our members have Commercial Drivers Licenses (CDL’s) with so-called “hazmat endorsements”.

NTTC’s member carriers supply transportation services to three major customer groups: 1) petroleum refiners and marketers; 2) manufacturers of chemicals and related products; and, 3) producers of food grade products (e.g. flour, beverages, sweeteners, etc.). With further regard to the latter category, it is significant to note that some “food grade” products, such as additives and preservatives, are shipped as “hazmat”.

Our members operate approximately 57,000 cargo tank motor vehicles, about 34,000 power units and employ (or lease) the services of 40,000 drivers.

NTTC’s Basic Position

At the outset, we recognize that the subject docket (in its entirety) is complex and imposes interrelated mandates on motor carriers as well as state and Federal officials. NTTC asks TSA to note that our comments center only on the “fingerprinting” and “criminal background check” elements of the final rule.

NTTC supports the use of a “fingerprint-based criminal background check” as an addition to the requirements for obtaining a “hazmat endorsement” to an individual driver’s CDL. In fact, this Association joins other organizations which would support

extension of the mandate to all applicants for a CDL (including renewals), regardless of the need for the relevant endorsement.

Nonetheless -- and for the reasons stated below -- we ask TSA to indefinitely postpone the November 3, 2003 implementation date by which time all applicants for a "hazmat endorsement" (including renewals) will have to supply fingerprints "in a form and manner prescribed by TSA" to initiate the application process.

Reasons For NTTC's Request

With the obvious exception of the United States Congress, virtually all parties familiar with the concept of "fingerprint-based criminal background checks" knew that implementation of the relevant mandates in the USA Patriot Act would prove to be formidable (at best). Both the statute and the regulations placed new and untested requirements on trucking companies, Federal investigative and law enforcement agencies as well as the motor vehicle licensing authorities in the several states and territories. Moreover, the lives and livelihood of an estimated 3.5 to 5 million truck drivers were impacted. In fact, the impact on governmental entities and trucking companies pales in comparison to the practical burdens imposed on the community of commercial motor vehicle drivers.

Cold reality dictates that, beginning on November 3, 2003, all applicants for new (and renewals of) "hazmat endorsements" must initiate the application process with fingerprints taken "in a form and manner" proscribed by TSA. Yet, as of July 7, 2003, TSA has yet to advise the public of the acceptable "form and manner" of the fingerprinting. Likewise, TSA has yet to publish any "chain of custody" with regard to how fingerprint records are to be transmitted from the entity doing the fingerprinting to the state licensing agency. Assuredly, TSA's regulatory program cannot proceed to implementation absent these "bare bones" guidelines and directives.

To compound the problem, NTTC and our carrier members have either corresponded with or spoken to representatives of various state licensing agencies. These communications reveal that some state officials are either totally unaware of the existence of the TSA regulations, or, if they are aware of the rules (in whole or in part), they have yet to construct concrete plans for implementation.

For example, the State of Indiana (reportedly) has "a game plan". Indiana intends to set up a number of so-called "Supercenters" throughout the state where drivers can be fingerprinted and complete the associated "paperwork" in a "one stop shopping" concept. However, Indiana cannot initiate their plans until TSA acts. Will fingerprinting be "paper and ink" or electronic? If electronic, what systems can (and cannot) be utilized? Can the state licensing agency do the fingerprinting, or will TSA require the involvement of law enforcement personnel in this process? If one assumes that Indiana will have to purchase new equipment, the state has its own procurement rules and standards (e.g. which may require time-consuming public notice, competitive bidding, etc.) with which

licensing officials must comply. Obviously, Indiana appears to be “ahead of the curve”; yet, it is equally obvious that their officials could not possibly meet the November 3, 2003 deadline for implementation.

In informal meetings and briefings, given by TSA officials to representatives of industry, NTTC has been told that TSA is relying heavily on the “American Association of Motor Vehicle Administrators” (AAMVA) to guide and assist the states in implementation. In NTTC’s opinion, TSA made the “right choice” in this regard. AAMVA has the knowledge, expertise and experience to fulfill the mission.

Yet, even that respected organization has its misgivings and has already thrown up the caution flag.

Dispositive on this issue, is a June 20, 2003 letter to both TSA and the Federal Motor Carrier Safety Administration from Ms. Linda R. Lewis, AAMVA’s President and Chief Executive Officer. Relevant excerpts from that letter are as follows:

“The AAMVA community has very serious concerns about the implementation timeframe of the interim final rule, particularly in light of the fact that neither the technical specifications states need to make necessary modifications to the Commercial Driver License Information System (CDLIS) have not been detailed nor have many of the other critical aspects of the credentialing and background check procedures.

“...if it comes to pass that states are not in compliance by November 3, 2003, administrators may advise their state officials of the liability associated with issuing HAZMAT endorsements to potential terrorists and recommend that their state cease such issuance until they are able to come into full compliance with the interim final rule. This could potentially have an adverse effect on the transport of hazardous materials throughout the country.

“...we ask that you employ a technical amendment to the interim rule to move the compliance date from November 3rd to allow TSA and FMCSA adequate time to develop well-thought-out system specifications and credentialing procedures. If this were not possible, then, we would ask that states be indemnified from all liability until such time as they are able to come into full compliance.”

The practical problems detailed by AAMVA are underscored by the State of Nebraska. In a May 28, 2003 letter from Ms. Patricia K. Phillips, Deputy Director of the state’s Department of Motor Vehicles, she notes (in part):

“The Nebraska Department of Motor Vehicles must have statutory authority prior to implementing the Patriot’s Act (sic). The 2003 Legislative Session has ended and the Body will not convene again until January 1, 2004. The very earliest legislation would be passed in Nebraska would be shortly after that time. We are asking consideration in delaying implementation of these rules until July 1, 2004 based on the facts outlined above.”

In the context of these letters -- and given the key role of the states in implementing TSA's interim final rule -- it is imperative that these requests (which parallel those of NTTC) not fall on deaf ears. Clearly, the states are unprepared for November 3, 2003 implementation. Until that situation is rectified neither the "letter nor spirit" of the "fingerprinting/criminal background check" will achieve its intended objective.

As noted above, the motor carrier industry has concerns separate and apart from those of state governments.

For example, TSA estimates that the fingerprinting and background check processes will consume approximately 90 days (plus any time for waivers and/or appeals). Yet, the average long-haul driver of truckload freight will spend up to 26 days per month on the road (generally, away from his/her licensing state). Can the driver initiate the application process in a timely manner? We don't know, and we doubt that TSA has taken this pivotal issue into consideration. Can CDLIS (DOT's Commercial Driver Licensing Information System) be used to expedite this process? Again, we don't know.

Presumably, TSA's regulations (at Section 1572.5) would offer some relief to a limited number of drivers (caught in the rules' "time warp") by allowing the issuing state to extend the expiration date of an existing endorsement until April 29, 2004. Again, in practical terms, this permissive authority offers little or no consolation. First, the rules contemplate that the extension would be granted only for delays in processing a post November 3, 2003 "application" for renewal of an existing endorsement. If, however, a state is not in full compliance with either the TSA's "form and manner" of fingerprinting specifications and/or TSA's "chain of custody" requirements, does such an omission invalidate the application process for that potential endorsee? In other words, is an "application" either without fingerprints (or with fingerprints not in compliance with TSA's "form and manner") really an application, or just incomplete paperwork?

Furthermore, allow us to assume that a driver makes an appropriate and complete application to the state of Pennsylvania on October 1, 2003. The processing of that application is delayed by either the state or TSA. On March 1, 2004 that same driver is stopped at a DOT road check in River City, Iowa. He presents a CDL to a peace officer which shows an expired endorsement. There's trouble in River City. Given this very realistic scenario, will Pennsylvania be compelled to issue a letter (or some other indicia) to each and every driver so affected demonstrating that his/her endorsement remains valid?

Of course, even under the best of circumstances, Section 1572.5 offers questionable relief only to drivers renewing existing endorsements. It does nothing to assist drivers (and their employers) who apply to add the endorsement after November 3, 2003.

Conclusion

NTTC fully recognizes that the USA Patriot Act placed a very difficult burden on the staff of TSA, and we appreciate that the agency has acted in a responsive manner. However, good intentions notwithstanding, ample evidence demonstrates that the individual states are not prepared to implement TSA's requirements, and will not be prepared by November 3, 2003.

TSA's failure to indefinitely postpone that date invites chaos in the transportation of hazardous materials.

Respectfully submitted:

Clifford J. Harvison

President, National Tank Truck Carriers, Inc.